



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.14 OF 2025

Gaurav Rajabhau Kuchekar
Age: 32 years, Occu.: Labour,
R/o. Wadarwada, Ambajogai,
Tq. Ambajogai, Dist. Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through Section Officer,
Home Department (Special),
2nd Floor, Mantralaya, Mumbai-32.
2. The District Magistrate,
Collector and District Magistrate
Office, Beed.
Tq. And Dist. Beed.
3. The Superintendent,
Central Prison, Harsool,
Chhatrapati Sambhajinagar

.. Respondents

...

Mr. Sunita G. Sonawane, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for the respondents/State.

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

RESERVED ON : 06 MARCH 2025

PRONOUNCED ON : 18 MARCH 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. Sunita G. Sonawane for the
petitioner and learned APP Mr. G. A. Kulkarni for respondents – State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

3. The petitioner challenges the detention order dated 24.10.2024 bearing No.2024/RB-Desk-1/Pol-1/MPDA-17 passed by respondent No.2 as well as the approval order dated 30.10.2024 and the confirmation order dated 17.12.2024 passed by respondent No.1, by invoking the powers of this Court under Article 226 of the Constitution of India.

4. Learned Advocate for the petitioner has taken us through the impugned orders and the material which was supplied to the petitioner by the detaining authority after passing of the order. He submits that though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, two offences were considered i.e. Crime No.223 of 2024 registered with Ambajogai City Police Station, District Beed for the offences punishable under Sections 143, 147, 148, 149, 336, 452, 427, 461, 327, 504, 506 of Indian Penal Code and Crime No.592 of 2024 registered with Ambajogai City Police Station, District Beed for the offences punishable under Sections 352, 351(2), 3(5) of Bhartiya Nyaya Sanhita, 2023. Learned Advocate for the petitioner submits that the District Magistrate in his order dated 24.10.2024 has considered the offence vide Crime No.223 of 2024

registered with Ambajogai City Police Station, District Beed for the offence punishable under section 143, 147, 148, 149, 336, 452, 427, 461, 327, 504, 506 of Indian Penal Code, however, he has not considered when the petitioner came to be released on bail. The bail order was passed on 21.09.2024. Conditions have been imposed while granting bail. The District Magistrate has stated in connection with the aforesaid offence "proposed detenu is absconding and investigation is going on in the offense". That means the sponsoring authority had not appraised the District Magistrate as to when the order of bail was granted. The second offence that is considered is under sections 352 351(2),3(5) of Bhartiya Nyaya Sanhita, 2023 registered with the same police station which is in fact a non cognizable offence. Both the offences even if taken on their face value would not have led to the public order situation. The statements of in-camera witnesses 'A' and 'B' would also lead to law and order situation and not the public order. Therefore, the impugned order deserves to be quashed and set aside.

5. Learned Advocate for the petitioner, in support of her submissions, relies on the following decisions :-

I) Nilesh Sunil Pendulkar Vs. The District Magistrate, Ahmednagar and others, [Criminal Writ Petition No.1820 of 2023 decided by the coordinate Bench of this Court on 29.02.2024];

II) Alakshit s/o Rajesh Ambade Vs. The State of Maharashtra and another, [Criminal Writ Petition No.626 of 2022 decided by this

Court Bench at Nagpur on 20.12.2022];

III) Ashokrao s/o Uttamrao Pawar Vs. State of Maharashtra and others, [Criminal Writ Petition No.738 of 2022 decided by this Court Bench at Nagpur on 08.02.2023];

IV) Pintu @ Sidharth Bhagwan Devde Vs. The State of Maharashtra and others, [Criminal Writ Petition No.1501 of 2023 decided by the coordinate Bench of this Court on 06.11.2023] and;

V) Pappu Kacharu Chorpade Vs. State of Maharashtra and others, [Criminal Writ Petition No.1107 of 2024 decided by this Court on 04.09.2024].

6. Per contra, the learned APP strongly supports the action taken against the petitioner. He submits that the petitioner is a dangerous person as defined under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the "MPDA Act"). The detaining authority has relied on the two in-camera statements and the subjective satisfaction has been arrived at. There is no illegality in the procedure adopted while recording the in-camera statements of the witnesses. Due to the terror created by the petitioner, people are not coming forward to lodge report against him and, therefore, it affects the public order. Learned APP relies on the affidavit-in-reply of Mr. Avinash Pathak, District Magistrate, Beed, wherein he demonstrates as to what was the material before him for taking cognizance. Perusal of the facts in

the FIR vide Crime No.223 of 2024 would show that many accused persons had barged into the house of the informant at night time and when informant refused to open the door, they had caused damage to three motorcycles, Swift car, Wagnor car and Auto rickshaw, which were parked in front of the house. All those vehicles were not belonging to the informant. That means, they had the intention even to cause damage to the property belonging to the other public and this is in fact the fifth offence of the petitioner. Earlier also he had committed offences against body. When the preventive action under section 110 of the Code of Criminal Procedure was not sufficient to curtail the criminal activities of the petitioner, the District Magistrate had no option but to declare him dangerous person and detain him under the said orders. The confidential statements were recorded on 01.09.2024 and 04.09.2024 respectively. Thereafter, those statements were verified by Sub Divisional Police Officer on 28.09.2024. Then the sponsoring authority submitted the proposal to DCP on 03.10.2024. The DCP then forwarded the same to District Magistrate and the detention order has been passed on 24.10.2024. Therefore, there is no delay or the procedural lacuna. Therefore, no fault can be found in the impugned order.

7. Before considering the case, we would like to take note of the legal position as is emerging in the following decisions :-

(i) ***Nenavath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367],***

(ii) ***Kanu Biswas Vs. State of West Bengal, [1972 (3) SCC 831]***
wherein reference was made to the decision in ***Dr. Ram Manohar Lohia vs. State of Bihar and Ors. [1966 (1) SCR 709];***

(iii) ***Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237];***

(iv) ***Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];***

(v) ***Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751) and;***

(vi) ***Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647].***

8. Taking into consideration the legal position as summarized above, it is to be noted herein as to whether the detaining authority while passing the impugned order had arrived at the subjective satisfaction and whether the procedure as contemplated has been complied with or not. In ***Nenavath Bujji*** (*Supra*) itself it has been reiterated by the Hon'ble Supreme Court that illegal detention orders cannot be sustained and, therefore, strict compliance is required to be made, as it is a question of liberty of a citizen. At the outset, it is to be noted that we are

required to confine ourselves to the offences which were considered for passing the detention order. The previous acts cannot be taken into consideration. Further, the first offence is alleged to be committed in 2018 and thereafter, three offences were committed in 2022. No action was taken for preventive detention at that time, but the action is taken in 2024. So, there appears to be no live link for taking action only after the two offences in 2024. Even final bond was taken for the preventive action under section 110 of the Code of Criminal Procedure on 10.04.2024. Why it was not cancelled and the petitioner was not called upon to deposit the amount is a question, which has been left unanswered by the District Magistrate. If we consider the facts in Crime No.223 of 2024, the incident had taken place around 12:30 a.m. on 25.05.2024 when the informant and her family members were sleeping. After hearing shouts, she had opened only the window and saw seven to eight persons holding stones, sticks, axe, sickle etc. Those people had pelted stones on their house. They were asking the informant as to where one Amol Chafekar is and they wanted to kill said Amol. When the door was not opened, informant was abused and threatened and while going, these persons had caused damage to those vehicles. Thus, in the entire scene, it was not on record before the District Magistrate that general public had come and they were threatened, for the damage to the vehicles belonging to other persons. There is offence under section

427 of Indian Penal Code. It is then also stated that prior to coming to the house of informant, all these persons had gone to the Pan shop belonging to the brother of the informant in Tathagat Chowk and 1500 packets of Cigarette, coins of Rs.200/- to Rs.300/- and other articles were taken away. Even if we take that fact also into consideration, yet the documents on record do not show that the statements of witnesses, especially the brother of the informant, whose Pan stall was damaged or articles were taken up, made available to the District Magistrate in which there was statement about involvement of public at large. Therefore, only law and order situation was created. Another important point is that the learned District Magistrate has stated that the proposed detenu is absconding when in fact he was already arrested on 20.09.2024 and even released on bail by the learned Magistrate on the next day that is 21.09.2024. Recently, in ***Joyi Kitty Joseph Vs. Union of India and Ors., [Criminal Appeal No.____ of 2025 (arising out of Special Leave Petition (Crl.) No.16893 of 2024) decided by the Hon'ble Supreme Court on 06.03.2025]***, reliance has been placed on the decision in ***Ameena Begum v. State of Telangana and others, [(2023) 9 SCC 587]*** and it has been observed that preventive detention is impermissible when the ordinary law of the land is sufficient to deal with the situation was *per incuriam* to the Constitution Bench decision in ***Haradhan Saha vs. State of W.B. [(1975) 3 SCC 198]***, in the limited judicial review

available to constitutional courts in preventive detention matters. However, in ***Ameena Begum (Supra)***, the Hon'ble Supreme Court explained the true distinction between a threat to "law and order" and acts "prejudicial to public order" and it is stated that it cannot be determined merely by the nature or quality of the act complained of, but in the proper degree and extent of its impact on the society. Further, it is observed that "When bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities."

Therefore the detention order on the basis of this material is erroneous. The other offence that has been considered is non cognizable offence.

9. Perusal of the in-camera statements would show that those statements were recorded on 01.09.2024 and 04.09.2024. Those

statements were got verified by Sub Divisional Police Officer on 28.09.2024 and then it went back to the sponsoring authority. Thereafter, sponsoring authority submitted the proposal on 03.10.2024 to the DCP. The DCP had then forwarded it to the District Magistrate. The District Magistrate has considered those statements and they appear to be in respect of the alleged incident that had taken place with them in the month of August 2022. After perusal of those statements, it can be seen that at the most law and order situation would have arisen.

10. Thus, taking into consideration the above observations and the decisions of the Hon'ble Apex Court, at the most, the statements as well as the offences allegedly committed would reveal that the petitioner had created law and order situation and not disturbance to the public order. Though the Advisory Board had approved the detention of the petitioner, yet we are of the opinion that there was no material before the detaining authority to categorize the petitioner as a dangerous person or bootlegger.

11. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

I) The Writ Petition is allowed.

II) The detention order dated 24.10.2024 bearing No.2024/RB-Desk-1/Pol-1/MPDA-17 passed by respondent No.2 as well as the approval order dated 30.10.2024 and the confirmation order dated 17.12.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner - Gaurav Rajabhau Kuchekar shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm